

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

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In the Matter of	}	
	}	
Advanced Television Systems	}	MM Docket No. 87-268; FCC 96-317
and Their Impact upon the	}	
Existing Television Broadcast	}	
Service	}	

INTERNATIONAL BROADCASTING NETWORK'S REPLY COMMENTS

I. Introduction

International Broadcasting Network (IBN), having earlier filed comments in response to the Commission's *Sixth Further Notice of Proposed Rule Making* and having reviewed various comments filed by others, hereby submits its reply comments.

II. There Is Substantial Opposition to the Digital Television Proposals

The number of parties filing comments in response to the *Sixth Further Notice* was unusually large. The comments reflected a wide range of views, both in support of the digital television proposals and in opposition thereto. While some broadcasters are in general support of the proposals, many others are in opposition. In general, the large commercial networks, National Association of Broadcasters (NAB) and some of the larger stations are in support of the proposals to varying degrees. On the other hand, a number of networks, National Religious

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Broadcasters (NRB) and many stations are in opposition. IBN is pleased that NRB, in particular, has taken a firm position in opposition to the digital television proposals in their present form. In its comments, NRB informed the Commission that the proposals "will have a severe impact upon many stations, including those represented by NRB." NRB requested that the Commission revise the digital television plan to make it voluntary rather than compulsory. Moreover, NRB insisted that the revised plan "accommodate all existing television stations, including low power stations as well as full power stations, on a fair and equitable basis." Finally, NRB stated that "all existing full power stations, low power stations and translators serving the public" should be protected. It is gratifying to IBN that the positions taken by NRB are consistent with, and supportive of, the positions taken by IBN. Accordingly, IBN wholeheartedly and enthusiastically supports the views expressed by NRB. It should be noted that NRB is a highly-respected and enormously-influential organization representing hundreds of television stations, radio stations, networks and programmers which reach an audience of millions of Americans on a daily basis. The Commission would do well to seriously consider the views of NRB in this proceeding.

III. Adoption of the Digital Television Proposals Would Be Devastating to Broadcasters

The comments IBN has seen are replete with specific examples of the devastating impact the Commission's adoption of the digital television proposals would have upon broadcasters. It is quite clear that the devastating impact would be felt by many full power stations as well as low

power stations. As the comments of Citidel Communications Co., Ltd., have shown, the capital and operating costs which would be necessary to implement the digital television proposals would be beyond the means of many stations. After citing specific data to support its position, Citidel, at page 4 of its comments, stated the following:

[I]t is apparent that such dramatic increases in capital and operating expenses could be genuinely debilitating for small market stations. Such a result is untenable and counter to the public interest that the Commission is obligated to serve.

IBN concurs with Citidel's conclusion that the digital television proposals would severely disadvantage, and be debilitating to, many broadcasters. In IBN's view, the digital television proposals, if adopted in their present form, would have a devastating impact upon the vast majority of television stations. The problems associated with any dual-channel, mandatory plan of conversion are enormous. From both a technical standpoint and a financial standpoint, the problems are much greater than has so far been recognized by the Commission.

IV. Adoption of the Digital Television Proposals Would Result in Loss of Service

If the Commission should decide to adopt the mandatory plan for digital conversion as is presently proposed, the resulting loss of television service would be a major catastrophe affecting hundreds of communities and millions of viewers. In its earlier comments, IBN cited a few specific examples based on the Commission's digital channel allocation plan. The same thing would happen if NAB's digital channel allocation plan were adopted. For example, NAB has

proposed that the ABC affiliate in Lufkin, Texas, be given digital channel 10. As NAB has acknowledged, that would result in the displacement of various low power television stations, including IBN's K11SI. As virtually everyone in the service area of K11SI knows, that station is absolutely indispensable to the residents of Lufkin and a number of other nearby towns. The mayor of Lufkin recently proclaimed over live television that K11SI had brought television to a level never before seen in East Texas. The enthusiasm of city and county officials for K11SI is backed up by that station's solid record of public service that has grown each year. Very few full power television stations can match or even approach the public service record of K11SI. Aside from covering local events like no other station can, K11SI has literally sent production crews across Texas and Oklahoma and, on more than one occasion, as far away as Russia to cover events in which the people of Lufkin had a special interest. Several years ago, the station sent a crew to Moscow for a month in order to document and produce a program on the first American drama troupe to bring an American musical to the Kremlin State Palace. The event was of particular interest to Lufkin because the production originated in Lufkin and many members of the drama troupe were residents of Lufkin. While in Russia, K11SI covered the civil unrest in Moscow as well as the removal of the first portrait of Lenin from the Kremlin. K11SI's footage aired in Lufkin and also on various international networks, including CNN and BBC. Subsequently, K11SI accompanied the same group to Moscow for an encore performance. On

that occasion, K11SI assisted Russian Television in televising the musical for broadcast on that nation's state-owned network and recorded the removal of the last statue of Lenin from the Kremlin. For the people of Lufkin, seeing their friends and neighbors participate in such events of international importance is a thrilling experience, never to be forgotten. Other types of programming produced and aired by K11SI include a very popular live call-in show and the area's only half-hour daily morning news program covering events throughout the county in which Lufkin is located. For sports fans, K11SI provides the only televised coverage of local high school and college football, basketball, baseball, soccer and swimming events. K11SI has even uplinked to satellite out-of-town sporting events involving local teams, in order that the hometown folks could see the games live. During the ice storm of last week, K11SI provided the area's only up-to-the minute coverage of electrical outages, school closures, road conditions and safety features around the clock. That is just a small sampling of the unmatched and irreplaceable public service K11SI provides to Lufkin and the surrounding area. Working alongside K11SI's highly-professional full-time staff, which includes a former executive of the local ABC affiliate and a former national executive of ABC, are 120 well-trained and hardworking volunteers. The station is just one reason Lufkin has become a vibrant city that is leading the Deep East Texas area into the next century. If the Commission were to allow K11SI to be displaced, Lufkin would lose a priceless and irreplaceable asset. That must not be allowed to happen.

V. There Are Serious Legal Problems

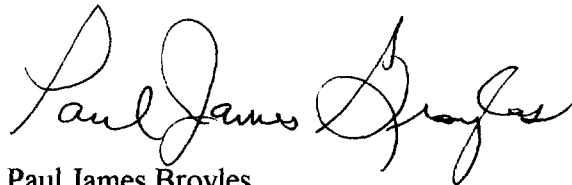
The current digital television proposals pose very serious legal problems. The proposed revocation of low power television licenses raises issues under the takings clause of the Fifth Amendment as well as the due process clause of the Constitution. The unconscionable failure to accommodate low power television stations on a fair and equitable basis raises questions under the equal protection clause. The Commission's reliance on *Polar Broadcasting v. FCC*, 22 Fed 3d 1184, is erroneous since that case has no precedential value, having been decided without an opinion. It is, in fact, a violation of the local rules of the Court of Appeals for the District of Columbia Circuit to cite that case as precedent. There are also important questions under a number of federal statutes, including the Communications Act of 1934, the Telecommunications Act of 1996, the Administrative Procedure Act, the Federal Advisory Committee Act and the Small Business Growth and Fairness Act of 1996. There may be unresolved issues under *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327, as well. The Commission must appropriately deal with these issues and ensure that its actions in this proceeding fully comply with the relevant statutes, the Constitution and court decisions. After addressing those issues, the Commission will undoubtedly find that the only lawful way to proceed with implementation of digital television is to adopt a plan which fully protects and accommodates *all* low power television stations in a fair and equitable manner. Now that the ATSC standard has been adopted,

it may be that the only means of accomplishing that essential objective is to abandon the concept of issuing second channels and to adopt a plan for voluntary, phased-in, on-channel conversion. Any such plan must accord to *all* low power television stations the same opportunity for conversion that is given to full power television stations.

VI. Conclusion

For the reasons stated herein, and for all the reasons set forth in IBN's earlier comments and reply comments, IBN respectfully urges that the Commission reject the current proposals for mandatory digital conversion as being contrary to the public interest and inconsistent with the preservation of universal, free, over-the-air television. Any modified plan or future plan for digital television should be voluntary and should protect and accommodate all existing television stations, including all low power television stations as well as all full power television stations, on a fair and equitable basis.

Respectfully submitted,
INTERNATIONAL BROADCASTING NETWORK
By its President

A handwritten signature in black ink, reading "Paul James Broyles". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

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